WP No. 3146 of 2018
C/W WP No. 13495 of 2015
WP No. 13496 of 2015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

WRIT PETITION NO.3146/2018 (S-CAT)
C/W
WRIT PETITION NO.13495/2015 (S-CAT) AND
WRIT PETITION NO.13496/2015 (S-CAT)

IN WP NO. 3146/2018

BETWEEN:

1. THE UNION OF INDIA
REPRESENTED BY THE CHAIRMAN,
CENTRAL BOARD OF EXCISE
AND CUSTOMS, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
NORTH BLOCK, NEW DELHI-110001.

2. THE COMMISSIONER OF CENTRAL TAX
BENGALURU SOUTH COMMISSIONERATE,
C.R. BUILDING, QUEENS ROAD,
BENGALURU-560001.
REP. BY ITS COMMISSIONER
MR. NARAYANASWAMY G.

...PETITIONERS

(BY SRI. JEEVAN J NEERALGI, ADV.)

AND:

SRI SURESH B BADAS
S/O LATE BASAVAPPA,
AGED ABOUT 56 YEARS
SUPERINTENDENT OF CENTRAL TAX,
BENGALURU SOUTH COMMISSIONERATE,
BENGALURU-560001.

...RESPONDENT

(BY SRI. N G PHADKE, ADV.)

Digitally signed by NANJUNDACHARI
Location: High Court of Karnataka

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL DATED 09.10.2017 IN ORIGINAL APPLICATION NO.170/00065/2017 VIDE ANNEXURE-A AND ETC.

IN WP NO. 13495/2015

BETWEEN:

1. UNION OF INDIA
   REP. BY ITS CHAIRMAN
   CENTRAL BOARD OF EXCISE AND CUSTOMS
   MINISTRY OF FINANCE
   DEPARTMENT OF REVENUE
   NORTH BLOCK, NEW DELHI.

2. COMMISSIONER OF CENTRAL EXCISE
   & SERVICE TAX
   MANGALORE COMMISSIONERATE
   7TH FLOOR, TRADE CENTRE
   BUNT'S HOSTEL ROAD
   MANGALORE-3.

...PETITIONERS

(BY SRI. JEEVAN J. NEERALGI, ADV.)

AND:

SHRI B N SUDHEENDRA
INSPECTOR OF CENTRAL EXCISE
O/O THE DEPUTY COMMISSIONER
OF CENTRAL EXICSE
UDUPI CENTRAL EXCISE &
SERVICE TAX DIVISION
VISHNUPRIYA BUILDING,
L B S ROAD, AJJARKAD
UDUPI-576101.

...RESPONDENT

(BY SRI. N G PHADKE, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 19.06.2014 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE IN O.A.NO.228/2014 AT ANN-A AND ETC.

IN WP NO. 13496/2015

BETWEEN:

1. UNION OF INDIA
REP. BY ITS CHAIRMAN
CENTRAL BOARD OF EXCISE AND CUSTOMS
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
NORTH BLOCK, NEW DELHI.

2. COMMISSIONER OF CENTRAL EXCISE
& SERVICE TAX
MANGALORE COMMISSIONERATE
7TH FLOOR, TRADE CENTRE
BUNTS HOSTEL ROAD
MANGALORE-3.

...PETITIONERS

(BY SRI. JEEVAN J NEERALGI, ADV.)

AND:

SHRI.G.RAMESH BHATT
SUPERINTENDENT OF CENTRAL EXCISE
O/O THE DEPUTY COMMISSIONER OF CENTRAL EXICSE
UDUPI CENTRAL EXCISE & SERVICE TAX DIVISION
VISHNUPRIYA BUIDLING,
L B S ROAD, AJJARKAD
UDUPI-576101

...RESPONDENT

(BY SRI. N G PHADKE, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 19.6.2014 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE IN O.A. NO.227/2014 AT ANN-A AND ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDER ON **24.10.2026** COMING ON THIS DAY, ***S.G.PANDIT J.,*** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
AND
HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE S.G.PANDIT)

The above batch of writ petitions are taken up for hearing and disposed of by this common order since the impugned order relates to quashing of articles of charge issued to the respondents herein on the same facts and on the same incident and all the writ petitions raise the same question as to articles of charge in the facts and circumstances could have been quashed at the threshold.

2. In W.P.No.13495/2015, the Union by Central Board of Excise and Customs is before this Court aggrieved by order dated 19.06.2014 in O.A.No.228/2014 passed by the Central Administrative Tribunal, Bangalore Bench, Bengaluru (for short, 'the CAT') quashing charge memorandum dated 22.11.2013. In W.P.No.13496/2015, the Union of India by Central Board of Excise and Customs and Commissioner of Central Excise and Service Tax are before this Court aggrieved by order dated 19.06.2014 in O.A.No.227/2014 passed by the CAT quashing charge

memorandum dated 22.11.2013 (Annexure-A1) issued to respondent therein. In W.P.No.3146/2018, the petitioner – Union of India by Central Board of Excise and Customs and the Commissioner of Central Tax are before this Court aggrieved by order dated 09.10.2017 in O.A.No.170/00065/2017 passed by the CAT, quashing articles of charge dated 22.11.2013 (Annexure-A2).

3. At the relevant point of time, respondents in W.P.No.3146/2018 and W.P.No.13496/2015 were working as Superintendent of Central Excise/Superintendent of Customs, whereas respondent in W.P.No.13495/2015 was working as Inspector of Central Excise.

4. All the respondents in the above three writ petitions were issued with charge memorandum dated 22.11.2013 alleging similar or identical charge based on the same incident i.e., failure to notice wrong claim of exemption and failure to notice and assess the goods at the applicable rate of duty which were cleared to domestic tariff area resulting in financial accommodation to the

assessee. The said charge memorandum dated 22.11.2013 was the subject matter of O.As., before the CAT. Before the CAT, the respondents urged several grounds including the ground that determination of duty is a quasi judicial function. The CAT under impugned orders quashed the charge memorandum dated 22.11.2013 on the ground that charge not having any factual foundation at all and also holding that Government of India will pay duty and another wing of Government will received duty, if at all it is to be payable. Aggrieved by the quashing of charge memorandum dated 22.11.2013 in all the three O.As, the petitioners – Union of India and its authorities are before this Court in the above batch of writ petitions.

5. Heard learned Central Government Counsel Sri.Aravind V. Chavan for petitioners/Union of India and its Officers and learned counsel Sri.N.G.Phadke for respondents in all the writ petitions. Perused the entire writ petition papers.

6. Learned counsel Sri.Aravind V. Chavan for petitioners would submit that the respondents granted exemption which were not otherwise available for the tugs cleared by Mrs.Temba Shipyards Limited (for short, 'TSL'). The first tug was cleared under ex-bond bill of entry No.6/2008 dated 11.09.2008 by the respondent in W.P.No.13496/2015 and the second tug was cleared under ex-bond bill of entry No.18/2009-10 dated 29.07.2009 by petitioners in W.P.No.13495/2015 as well as petitioner in W.P.No.3146/2018. It is submitted that the tugs were cleared at Nil rate of duty as claimed by the TSL under exemption notification No.21/2002 dated 01.03.2002 without examining as to whether the said exemption notification would apply to the tugs imported by the TSL. It is further submitted that the exemption Notification No.21/2002 dated 01.03.2002 only exempted raw materials and parts for used in the manufacture of goods and not the finished goods (Tugs).

7. Learned counsel Sri.Aravind V. Chavan would submit that no interpretation was needed to the exemption Notification No.21/2002 dated 01.03.2002. The respondents were only required to examine whether goods imported under bills of entry referred to above were finished goods or raw materials or parts used for manufacture. Admittedly, the TSL had imported mid-size Boat which had no exemption. Therefore, it is submitted that enquiry was initiated to find out whether the respondents committed any misconduct in applying the exemption notification. It is submitted that it is not exactly the assessment of duty and it is application of exemption notification.

8. Learned counsel Sri.Aravind V. Chavan would submit that after applying proper exemption notification if there is wrong assessment, it may not amount to misconduct. However, he submits that in the instant case, the respondents applied exemption notification wrongly,

which was available for raw material to import of finished goods.

9. Learned counsel for petitioners-Revenue would submit that the CAT could not have at the initial stage interfere with the memorandum of charge and it was for the Enquiry Officer based on the material to be placed on record to give a finding as to whether the respondents applied proper exemption notification or whether it would amount to misconduct or not in the facts and circumstances of the case. Learned counsel for petitioners-Revenue would submit that the CAT could not function as Enquiry Officer at the initial stage to come to the conclusion that there cannot be any central excise payable at all at that point of time as excise duty or import duty payable by the private bonded warehouse had already been paid and accounted for. Learned counsel for petitioners-Revenue would submit that the finding of the CAT would come in the way of CESTAT deciding the appeal of the TSL where it has questioned the demand of duty

and penalty. Thus, learned counsel for petitioners-Revenue would pray for allowing the writ petitions and seeks for a direction to the Enquiry Officer to complete the enquiry within a time bound manner.

10. Learned counsel Sri.N.G.Phadke for respondents in all the above writ petitions would submit that wrong application of exemption notice or wrong assessment of duty would not amount to misconduct, therefore, the CAT is justified in quashing the charge memorandum dated 22.11.2013. Further, learned counsel for respondents would submit that there is no allegation of corruption or loss caused to the Revenue or there is no allegation that wrong exemption notification is applied for gain. Learned counsel would also submit that determination of duty is a quasi judicial function. As such, no enquiry against respondents would be maintainable. Further, learned counsel for respondents would submit that TSL is a 100% export oriented unit and it was entitled for exemption from duty. Learned counsel for respondents

would further submit that the duty and penalty demanded against TSL was challenged and the said issue is before the CESTAT. Further, it is stated that the CESTAT in its stay order dated 10.07.2012 found the demand of duty against TSL prima facie not justified. Learned counsel for the respondents would contend that when the CESTAT has given a prima facie finding that the demand of duty against TSL is not justified in its interim order, the initiation of enquiry against respondents is unreasonable.

11. Learned counsel for respondents would submit that the petitioners failed to provide documents sought by the respondents for their defence. Denial of necessary documents has resulted in denial of proper opportunity to defend themselves. Learned counsel has placed reliance on the decisions the Hon'ble Apex Court in support of his contentions, which would be dealt with at a later stage.

12. Having heard the learned counsel appearing for the parties and on perusal of the entire material on record, the only point which falls for consideration is as to,

Whether the CAT was justified in interfering and quashing the charge memorandum dated 22.11.2013 in all the above three writ petitions at the threshold?

13. Answer to the above point would be in the negative for the following reasons:

The Hon'ble Apex Court in catena of decisions made it clear that no interference could be made with the charge memorandum/articles of charge at the threshold, unless it is established that the authority which issued the articles of charge or charge memorandum is incompetent authority or is issued with malafide intention or it is established that there is no cause of action at all for initiation of enquiry.

14. In ***UNION OF INDIA AND ANOTHER VS. KUNISETTY SATYANARAYANA [(2006) 12 SCC 28]***, the Hon'ble Apex Court was considering whether the High Court was justified in quashing charge memo at the initial stage and at paragraphs 13 to 16, has held as follows:

*"**13.** It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.*

***14.** The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some*

punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. *Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.*

16. *No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."*

15. In ***SECRETARY, MINISTRY OF DEFENCE AND OTHERS VS. PRABHASH CHANDRA MIRDHA [(2012) 11 SCC 565]***, the Hon'ble Apex Court has observed that the law does not permit quashing of charge sheet in a routine manner in a departmental proceedings. The relevant portions at paragraphs 8, 10 to 12 reads as follows:

*"**8.** The law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing*

a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance. (Vide State of M.P. v. Bani Singh [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514] , State of Punjab v. Chaman Lal Goyal [(1995) 2 SCC 570 : 1995 SCC (L&S) 541 : (1995) 29 ATC 546] , Registrar, Coop. Societies v. Sachindra Nath Pandey [(1995) 3 SCC 134 : 1995 SCC (L&S) 648 : (1995) 29 ATC 538] , Union of India v. Ashok Kacker [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , Prohibition & Excise Deptt. v. L. Srinivasan [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , State of A.P. v. N. Radhakishan [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , Food Corporation of India v. V.P. Bhatia [(1998) 9 SCC 131 : 1998 SCC (L&S) 466] , Supt. of Police v. T. Natarajan [1999 SCC (L&S) 646] , M.V. Bijlani v. Union of India [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , P.D. Agrawal v. SBI [(2006) 8 SCC

776 : (2007) 1 SCC (L&S) 43] and Govt. of A.P. v. V. Appala Swamy [(2007) 14 SCC 49 : (2009) 1 SCC (L&S) 440] .)

10. *Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagappa v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] .)*

11. *In State of Orissa v. Sangram Keshari Misra [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority. (See also Union of India v. Upendra Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] .)*

12. *Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."*

16. In the light of the above principles laid down by the Hon'ble Apex Court, the contentions of the parties in the instant petitions shall have to be appreciated. It is not in dispute that at the relevant point of time of clearance of bill of entry No.6/2008 as well as bill of entry No.18/2009-10, the respondents were working as Superintendents of Customs and Inspector of Customs. The respondents cleared the bills of entry applying exemption notification No.21/2002 dated 01.03.2002 which was available for raw materials and parts for use in the manufacture of goods. However, the TSL had imported the finished goods (Tugs). The allegations against the respondents are that they were the officers who had cleared the goods under the above referred bill of entry by applying a wrong exemption notification. There is difference between application of exemption notification to goods imported and assessment of the duty thereafter. Moreover, the duty and penalty demanded against the TSL has not attained finality and in fact, the Appellate Authority has confirmed the demand of

duty and penalty, which is questioned before the CESTAT by TSL. Though there is interim order in favour of TSL staying the demand, it is submitted during the course of hearing by both the learned counsels that the appeal is still pending before the CESTAT and is yet to attain finality. Furthermore, CAT ought not to have ventured to give a finding as to TSL is a 100% EOU or otherwise, in the facts and circumstances of the case.

17. In the facts and circumstances of the case, the CAT could not have gone into the merits of the charge and could not have given a finding that there is no loss caused by coming to the conclusion that Government of India will pay duty and another wing of Government will receive duty, if at all it is to be payable. The CAT having found "even in the worst, it can be only alleged that applicant may have made a mistake" could not have quashed the articles of charge at the threshold. Moreover, finding of the CAT on the duty demanded/payable or finding that no loss caused would have bearing on the appeal pending

before the CESTAT. Therefore, the CAT ought not to have gone into merits of the charge.

18. However, whether the act of the respondents would amount to misconduct or not would depend on the material that would be produced by the Disciplinary Authority. As contended by learned counsel for the respondents, it is not assessment of duty. It involved application of proper notification either for exemption of duty or to determine duty. It is for the Enquiry Officer to find out as to whether the exemption notification was wrongly applied or whether it was intentionally applied being aware of goods imported is finished goods i.e., Mid-size Boat. Learned counsel for respondents had contended that there is no allegation of corruption or loss caused. However, on going through the charge memorandum dated 22.11.2013, we are of the opinion that it is for the Enquiry Officer to find out whether the respondents have caused loss by applying wrong exemption notification.

19. In W.P.No.3146/2018, the Enquiry Officer had conducted enquiry and had submitted enquiry report dated 06.04.2016 (Annexure-A17) against petitioner. At that stage, the petitioner was before CAT alleging that there was no proper opportunity provided during the course of enquiry and also no documents sought for defence were supplied. Since this Court has come to the conclusion in respect of other petitioners that CAT could not have interfered with the charge memorandum dated 22.11.2013, we are of the considered view that in the present writ petition also *de nova* enquiry could be concluded from the stage of recording evidence after providing the documents sought for by the respondent or providing an opportunity to the respondent to go through the charge sheeted documents or any other document on which the Disciplinary Authority places reliance.

20. Learned counsel for the respondents had placed reliance on the decision of the Hon'ble Apex Court in ***ZUNJARRAO BHIKAJI NAGARKAR VS. UNION OF INDIA AND OTHERS [(1999) 7 SCC 409]*** to contend that no

departmental enquiry would be maintainable on the allegation of failure to exercise quasi judicial power properly. There is no doubt with regard to the said principle. However, the same would have no application to the facts of the present case, since in the instant case, it is not purely assessment of duty and penalty. It is wrong application of exemption notification. Whether the respondents applied wrong exemption notification intentionally for any gain is the question. The question of assessment would be thereafter.

21. Learned counsel for the respondents placed reliance on various decisions with regard to determination of duty under the Customs Act. However, determining duty is not the issue in the present writ petitions and the said question is pending before the CESTAT. Therefore, those decisions would not assist the respondents in any manner.

22. For the reasons recorded above, we are of the considered opinion that the CAT committed grave error in quashing the charge memorandum dated 22.11.2013 at the initial stage. Hence, the following:

ORDER

a) Writ petition Nos.3146/2018, W.P.No.13495/2015 and W.P.No.13496/2015 are allowed and order dated 09.10.2017 in O.A.No.170/00065/2017, order dated 19.06.2014 in O.A.No.228/2014 and order dated 19.06.2014 in O.A.No.227/2014 are set aside.

b) In W.P.No.13495/2015 and W.P.No.13496/2015, the petitioners shall proceed with the enquiry on the charge memorandum dated 22.11.2013 and complete the enquiry within six months from the date of uploading the order on the Website of the High Court.

c) In W.P.No.3146/2018, the petitioners shall commence de-nova enquiry from the stage of recording evidence after providing documents sought for by the respondent for his defence or providing sufficient opportunity to inspect the charge sheeted documents or documents on which the Disciplinary Authority places

reliance and shall complete the enquiry within six months from the date of uploading the order on the Website of High Court.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(DR.CHILLAKUR SUMALATHA)
JUDGE

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CT:bms